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**James Madison's Four Accounts of
the Problem of Faction**

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Abstract

James Madison's Four Accounts of the Problem of Faction

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James Madison wrote four accounts of faction, the most public and famous of which was Federalist 10. By examining all four accounts, I undertake to develop a more capacious understanding of the design and purpose of Madison's vision for American constitutional politics than can be extracted from an examination of Federalist 10 alone. I attempt to collate the unique insights of each account of faction into a coherent unity, with special attention to Madison's rhetoric. I conclude that the three least famous accounts of faction, correctly read, perfect and extend the account in Federalist 10 by offering a more candid window into Madison's thought on human beings and the political life for which he thought them fit.

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OVERVIEW

Federalist Number 10 has figured prominently in the consciousness of students of American government as a remarkably diagnostic account of the working of American national representative politics. The illustration of national politics in that account exhibits a Tocquevillian prescience with respect to the workings of the government, and an authoritative, if deliberately incomplete or partial, insight into the logic and theoretical foundations of that political order from the architect of that order, James Madison. For students of the American Founding, continued close readings of Federalist 10 raise as many questions as first, second, and even third readings appear to put to rest. What understanding of human beings underlies Federalist 10? What understanding of political life? What purposes did the author intend his account to serve? What light does the account shed on the character, functioning, and purposes of American government?

In order to lay the groundwork for answering such questions, one must investigate the rhetorical character of Federalist 10. Federalist 10 was a public presentation of a novel argument for the adoption of the proposed Constitution. As Federalist 10 was written for public consumption, one might suppose that, whatever its theoretical merits or character, one of its rhetorical purposes, if not its primary rhetorical purpose, was to persuade. To persuade whom of what? To persuade its immediate audience—the citizens of the state of New York—of the merits of a proposed “plan of government” in the run-up to the state ratification conventions. Its rhetorical intent, then, would seem to be emphatically political: an act of public intervention calculated to cause a specific political effect or to contribute to a specific political outcome, namely, the adoption of the Constitution. Of course, when a writer’s intent is political, one cannot expect his writing to exhibit complete theoretical candor, especially when his writing is addressed to a skeptical audience. This is not to say that writers are never completely forthright about their fundamental un-

derstanding of their subject in such circumstances, but that, for the rhetorical purpose of persuading a specific audience to perform a specific action, they are rarely so. And neither is this to say at the outset that Madison necessarily wrote anything that he understood to be false or inaccurate in Federalist 10, nor is it to preclude the possibility that he intended Federalist 10 to be both a civically educative and uniquely insightful account of the workings of American government for subsequent generations. But a plausible and, as I hope to show, conclusive, hypothesis is that Federalist 10 obscures the complete theoretical candor of its author.

Fortunately, there is not only a way to test this hypothesis, but also a means, if not of extricating Madison's deepest and most private thought, which, ultimately, may have accompanied him to the grave, of at least arriving at a more capacious understanding of his thought on the problem of faction and the mechanisms by which American government would ameliorate it. Between April and October 1787, Madison wrote three documents, each of which appears at first glance to be a draft of the account of faction that would appear in Federalist 10 on November 23 of that year. The first is a document entitled "Vices of the Political System of the United States" (hereafter "Vices") that Madison composed in April in preparation for the convention in Philadelphia. The second is contained within an address he gave to the Philadelphia Convention on June 6. I have for purposes of this paper relied upon Madison's own summary of that account as recorded in his notes from that day. The third and final account developed prior to Federalist 10 is embedded in an October 24 letter to Thomas Jefferson.

Each of these accounts a version of Madison's thought on faction because while they all share a common core of arguments about faction, each addresses different subjects and proffers new positions that Madison does not repeat in the others. Now a version is a species or type of thing rather than an improvement or correction of that thing,

as a draft or iteration would be. Each of these three documents is a version rather than a draft because the often subtle differences in logic and emphasis between the documents are mutually compatible rather than contradictory. Indeed, more than compatible, the differences logically supplement one another and combine to paint a complex portrait of the system some of whose aspects Madison clearly thought were necessary, and others that the unelaborated logic of his arguments requires, to obviate the problem of faction. Thus in the analysis that follows, I do not pretend always to speak for Madison. But I do hold that the conclusions I develop from his thought, as he presents it throughout the four versions, are consistent with and required by it. Finally, it is by assembling the differences between these accounts in one place that I hope not only to expound Madison's full diagnosis of and solution to the problem of faction, but also to lay the groundwork for answering the questions posed at the beginning of this work. For in working through Madison's accounts of this the quintessential ill of representative government, one is able to witness glimpses of Madison's understanding of human beings and the political life for which he thought them to be fit.

There is much overlap between all four accounts of faction. To minimize repetition I have collated the arguments and rhetorical progressions common to each version into what I will call the common framework of Madison's account of faction. After expounding the common framework, I will delve into the peculiar elaborations and qualifications of that framework each version contributes. Finally, I will attempt briefly, in light of the detailed examination that precedes it, to recount the salient contours of Madison's thought on the primary subjects his analysis implicates.

Before I lay out the common template, however, a brief word about the public or private character of each version is in order. Two of the versions, the June 6th convention speech and Federalist 10, were written for and delivered to skeptical audiences, both of

whom Madison was exhorting to specific, albeit disparate, paths of action. As such, I believe, and hope to show, that the ruminations I earlier presented on the political intent of Federalist 10 apply additionally to Madison's convention address. The other two versions were written for private audiences. Madison sent a copy of the Vices to George Washington, who would go on to serve as president of the Convention. But its form and substance indicate it was written as a brainstorm or outline of Madison's still-developing private thoughts. The October 1787 letter to Jefferson exhibits a private character, divulging to Jefferson, along with a version of the author's account of the problem of faction, his mild disappointment at the final product of the Philadelphia Convention, Convention gossip, and the identity of an anonymous pamphleteer. While not simply dispositive, these elements suggest that the contents of the letter were not intended for public knowledge, at least in Madison's lifetime. Indeed, the private character of the Vices and Madison's October 1787 letter to Jefferson accounts for their being less guarded and more revealing of the importance in Madison's mind of certain elements of the argument he downplays in the public versions. In my analysis of the versions, I have not placed explicit weight on the public or purportedly private character of the audience to which it is addressed, since I believe the full logic of Madison's account can show which of the points are the most crucial to the account's success. I mean only to say that, as we will see, a preponderance of such points come from the private versions. Neither have I found it appropriate, to repeat, to afford too much weight to the chronological order of the versions as one draft improving upon the next. I intend to show that in light of the fullest logic of his account, Madison's downplaying or omission of certain points from one version to the next is attributable not so much to a change or revision in his thought as to the particular rhetorical strategy he adopted for addressing each audience.

THE COMMON FRAMEWORK OF THE ACCOUNTS OF FACTION

The common framework begins by drawing the reader's attention to the pathologies of early American political life under the Articles of Confederation to which Madison most imputes the need for a strong government of national scope: the injustice and the violation of individual rights committed or countenanced by the state governments. Such ills are caused by factions, which "all civilized societies" must permit. A salient smattering of the kinds of factions found in the young American republics are creditors/debtors, rich/poor, husbandmen/merchants/manufacturers, religious sects, "followers of different political leaders" (Vices), "inhabitants of different districts" and importantly, "owners of different kinds [species] of property." Whenever a legislative majority forms on the basis of a shared sentiment or passion, it will threaten the rights and interests of minorities who do not partake of the majority. So powerful and universal is this tendency in representative governments that self-regulating restraints on the majority are insufficient to prevent this from occurring. There are four such maxims "conventionally supposed" to restrain majorities. The first is the standard or expectation of classical political virtue: ruling for the common good. While this "prudent regard" should be of sufficient weight to restrain the majority from abusing the rights or interests of the minority, it "is seldom heeded." The second is "honesty is the best policy." But this rule is as little obeyed by individuals as by collectives of the same. The third is the majority's concern for its own reputation or what Madison terms "respect for character."

While Madison quickly dispatches the first two restraints with one-line rebuttals, he devotes much more space exploring this third popular notion, which suggests he believes it has more currency or plausibility. This ostensible check is insufficient to curb majoritarian abuses for three reasons. The first is that the concern for the reputation of the collective held by each member of it is inversely proportional to the size of the collective.

As an association increases in size, each member becomes a smaller part, acquires a smaller influence over its decisions, and receives a smaller share of the praise and blame imputed to the association. Whereas a person largely controls his personal reputation with his own calculation and actions, as the member of a collective he can plausibly eschew much or all of the responsibility for its unpopular actions. Because of this fact, the analogy between the constraint that an individual's concern for his own reputation places on his behavior and the constraint that the concern he possesses for the collective of which he is a member places on his behavior as a member of that collective simply does not hold. The second reason that a concern for reputation is ineffective is that the majority sets the standards by which its behavior is to be judged. The reputation of collectives and individuals is the popular perception of the character and conduct of those entities. But the members of a majority aggregately reflect the character and the political preferences of their constituents. To the extent the former misbehave, then, they do so generally in accordance with the opinions and prejudices of the latter. Thus the majority cannot be relied upon to be an impartial judge of those cases in which its interests clash with the rights or interests of a minority. Self-interest and pride distort and even dictate one's view of justice and the public good: rarely are the first two at odds with either of the last.

The fourth and final undependable constraint on the majority is religion or conscience, words Madison uses interchangeably. Religion suffers from the same problems as the presumed restraint of a concern for reputation: regardless of its effect in individual cases, it fails to restrain collectives. Indeed, conscience is an even less effective restraint on individuals than a concern for reputation; it is therefore an even smaller constraint on the behavior of collectives. As Madison puts it in two of the four versions:

[t]he conduct of every popular assembly acting on oath, the strongest of religious Ties, proves that individuals join without remorse in acts, against which their con-

sciences would revolt if proposed to them under the like sanction [the religious oath], separately in their closets (Vices, Letter to Jefferson).

A separate and deeper problem with religion is that it is a “passion;” while it can sometimes be “kindled” into a popular “enthusiasm” that can, for a short time, restrain the behavior of associations, its character precisely as a passion tends to inflame the collective psychology of individuals acting in concert. In such instances religion can serve as an equal motive for majorities to oppress minorities as to restrain themselves.

Having surveyed a litany of social causes for faction in contemporary American governments, Madison proposes a remedy that he claims is the only solution consistent with the majoritarian spirit of those governments. That solution is what I will call for the rest of this work “diversity republicanism.” Diversity republicanism is the “great desideratum” or first purpose of American government. It consists in “enlarging the sphere” or scope of government beyond those of the states to a national government that possesses large electoral districts. By virtue of the complexity and extent of the whole from which it draws, the officeholders of this central government will tend to represent a vastly greater heterogeneity of interests, passions, and views relative to the officeholders of state governments. The smaller, more homogeneous settings of state legislatures help legislators to identify common interests, passions and views that can constitute the basis for assembling majority coalitions to enact unjust policies that serve those interests, passions, and views. In contrast, the effect of the artificially heightened heterogeneity of views, passions and interests in the national government renders the process that occurs in the state governments more difficult, and ideally impossible, in the national government. The necessary condition of oppression, namely a majoritarian interest, passion, or unjust policy, may or may not exist, but the sufficient condition of its being carried into action, namely a majority’s identifying it, will be less likely. The size of the national legislature is an ad-

ditional impediment to a majority's implementing oppressive designs, Madison avers, because the effect of a large relative to a small number of legislators is to decrease the possibility and obstruct the success of legislative cabals. The primary purpose of diversity republicanism, then, is to structure national elective political office so as to minimize the possibility of majoritarian factions forming in the national government and implementing legislation that harms the interests or violates the rights of minorities.

The second purpose or "auxiliary desideratum" of diversity republicanism is to increase the likelihood that the nation's most competent and prudent persons will be elected to the national government. The very character of diversity republicanism and the size of national elective office secure this end. Participating in national office is most attractive to persons of "refined" and "extended" views and least attractive to the parochial and narrow-minded persons for whom, in Madison's view, the state governments are notorious. The cosmopolitanism of the designs and character of the national project tends to deflect from national channels the political ambitions of persons who do not share or endorse that cosmopolitanism. Diversity republicanism thereby selects for officeholders who are partial to nationalism and who exhibit a political ambition that is necessarily greater than that of persons who prefer the political life of the states. As for the size of national elective office, Madison presents an explicit account of how larger electoral districts increase the odds of higher-quality candidates only in Federalist 10, but it is possible to infer this logic from every version. The voting population of any given electoral district is roughly proportional to the number of qualified persons for political office in each district. Smaller districts may therefore contain only a few or no such qualified persons; larger districts will contain a greater and more conspicuous population of such persons. The larger the district, therefore, the greater the number of prudent and rational candidates who can seek national elective office, that that district will contain. Together I

call these two rhetorically subordinate aspects of Madison's accounts of faction the meritocratic leadership filters of diversity republicanism.

So concludes the common template. Thus far there is nothing we could not have known from reading Federalist 10, and indeed the template necessarily omits much in Federalist 10 that Madison does not develop in his other versions. I will now detail the singular insights of each. To begin, then, with the Vices of the Political System of the United States: this document contains a list and discussion of twelve items which can be divided into two parts. The first is comprised of items 1-10 and 12. The second is item "11. Injustice of the laws of the States" or the first version of Madison's diagnosis of and solution to the problem of faction. Because Madison identifies faction as the primary cause of the need for amending the Articles of Confederation, and because many of the other items are alluded to or subsumed by Madison's accounts of faction, I will confine myself in this work to examining item 11 of the Vices. This is not to say those items that Madison does not explicate in his accounts of faction are unimportant, but that they merit a robust and dedicated analysis that would considerably expand the scope of this work, and that I will therefore not attempt to shoehorn here.

THE VICES

In the Vices, Madison makes a distinction that he does not reiterate or elaborate in any of the subsequent versions. This distinction concerns the cause of injustice and oppression in the state governments, which he elsewhere attributes to unbridled factions simply. In the Vices, Madison first identifies an alternate source apart from factions (what he calls, in this version, "the people themselves"): the character of persons who tend to aspire to political office. These persons can be motivated by three things: ambition, self-interest, and the public good, and "[u]nhappily the two first are proved by expe-

rience to be most prevalent.” Because they are motivated by their own good, the most self-interested office holders are the hardest working and thus the most successful. The invariable result is that self-interested legislators predominate in legislative leadership positions and have an outsized influence on the activities of legislatures. Such legislators actually possess different views and interests from those of their constituents, and these legislators succeed in retaining office only by cloaking their “base and selfish measures, by pretexts of public good and apparent expediency.” These persons succeed in winning over the mass of “honest but unenlightened representative[s]” which, like the general voting population, lacks the discernment to see its leaders for the wolves they are and not the shepherds they dissemble. This line of thought emphasizes and illustrates in greater depth another crucial vice, the poor quality of state legislators, that diversity republicanism is intended to correct or ameliorate by directing persons of cosmopolitan and enlightened views to national office. One can expect very few competent and virtuous legislators for every dozen narrowly self-interested, petty demagogues, and diversity republicanism’s large electoral districts offer a better promise of containing at least one of the former to compete with the latter for a national office. Additionally and more profoundly, this portrait of legislative activity suggests that Madison thought that there would always be an insoluble tension or divergence of interest between the people and their elected representatives, even at in the national government, despite or perhaps precisely because of its meritocratic structural filters. To the extent that diversity republicanism offers a channel and filter for great political ambition, the persons who partake of national elective office will likely differ in perspective, temperament, opinion, and capacity from their constituents, perhaps in ways that improve the quality of government but detract from its representativeness. This impression is subsequently confirmed in the letter to Jefferson.

The second unique insight of the Vices arises from Madison's elaboration upon the discussion of the inefficacy of a concern for reputation on legislatures' behavior. Public opinion is the same as the opinion of the majority. Although individuals of "extended views, and of national pride," will elevate the quality of the nation's policies to the approbation of foreign powers, the concern of the "people at large of the Country" for the opinions of other persons is inversely proportional to the geographic remove of those persons.

Is it to be imagined that an ordinary citizen or even an assemblyman of Rhode Island in estimating the policy of paper money, ever considered or cared in what light the measure would be viewed in France or Holland; or even in Massachusetts or Connecticut? It was a sufficient temptation to both that it was for their interest: it was a sufficient sanction to the latter that it was popular in the State; to the former that it was so in the neighbourhood.

This remark elucidates more clearly the conundrum diversity republicanism is designed in part to ameliorate. The majority's propensity to abuse minorities' rights and disregard minorities' interests is a real and abiding problem in Madison's eyes, but here we see the first indication that faction is not so much the efficient as the proximate cause of injustice and the young country's acute political ills. The efficient causes are the majority's lack of wisdom and, to the extent it lacks wisdom, its unfitness to rule. While Madison explicitly links paper money to individual property rights and thus the injustice of faction, his treatment highlighting the reputation among foreign and even other state governments of the American states not for rights abuses but imprudent and myopic policies suggests that a lack of endemic wisdom is a deeper and more intractable problem for democracies, independent of their tendency to violate the rights of minorities. It is only by referring to an external view of the factious injustice of the states that Madison is able to indicate, albeit subtly, that the profounder problem is a lack of wisdom within them.

The final unique insight of the Vices is the analogy Madison develops between the relation of an extensive republic to a limited monarchy and that of a traditionally conceived republic to an unlimited monarchy. The considerable advantage of a limited monarchy to an absolute one is the presence of one or more rival political institutions that act as intermediaries between the monarch and the people. The institutions act as dykes against and channels of the power the monarch would otherwise exert on the people directly, often to the people's detriment. As dykes they frustrate and as channels they mold the monarch's power. Thus a limited monarch is largely prevented from enacting policies adverse to the interests of the people. The advantage of an extensive republic over a traditional one is similar in effect if not form. The traditional republic is exemplified by the Greek city-states of antiquity and the Roman Republic: a polity with a small territory and a homogeneous, familiar, and virtue-oriented population. The distinctive political feature of the traditional republic is the plenary vestment of sovereignty in a deliberative assembly. No constitutional restraint and no rival institution can negate a majority vote of the assembly. For Madison, the American states are analogues of traditional republics and the national government is the analogue of an extensive republic. The advantages of an extensive republic over a traditional one, then, are the meritocratic leadership filters and faction-obviating scope of diversity republicanism that curtail the unwise democratic administration not uncommon to, and the rights abuses prevalent in, traditional republics.

The foundational principle of republicanism is that "the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights." Traditional republics eliminate the quintessential political vice of unlimited monarchies, namely, the prerogative and propensity of the monarch to distinguish between his good and that of his subjects, and exploit the latter putatively in the interest of the former. A popular base in the government spares republics this inconvenience. Instead, the republic's

quintessential flaw is its tendency to sacrifice the good of the minority to that of the majority. Diversity republicanism corrects this flaw by “modif[ying] [the] sovereignty” of republics to produce conditions of political restraint that in their operation approximate the institutional restraints on a limited monarch. Diversity republicanism thereby prevents “one part of the Society from invading the rights of another” while the principle of traditional republicanism prevents the government or rulers “from setting up an interest adverse to that of the whole Society.”

We can explicate several crucial insights from the Vices. The most important revelation is that Madison is cognizant of and grappling with a dilemma at the core of political philosophy: procuring wisdom in political life. From his reflections on this consideration we can draw three inferences. The first is that Madison decides to confine his proposals and theorizing to the only regime palatable to modern sensibilities, democracy. He never countenances an alternative and clearly wishes to preserve the integrity of, and ensure a central role for, the “republican principle” or majority rule. However, in so doing, Madison recognizes democracy tends to empower unwise leaders: the factious spirit of self-interested and vicious officeholders, while perhaps one of the more conspicuous democratic pathologies, is at bottom a symptom of the profounder disease of a lack of wisdom in political life. At first glance, it appears Madison’s solution to the problem of faction is intended merely to curb the excesses of factions rather than to prevent factions altogether. Yet the Vices contemplates an “auxiliary desideratum” of attracting persons of cosmopolitan sensibilities and great political ambition to the national government. Such personal qualities, while intrinsically beneficial to the national government, serve also as imperfect or partial proxies for the politically desirable characteristic of reason or wisdom. Finally, Madison’s extended analogy between the two types of monarchies and republics suggests that the preponderance of his solutions to the political ills of his time

will be institutional in character, and thus quintessentially modern. The Vices starkly demonstrates that its author is convinced that a new technology of politics is necessary, though not necessarily sufficient, for restoring the plausibility of popular rule and salvaging its reputation from the “opprobrium under which it has so long labored” (Letter to Jefferson).

THE CONVENTION ADDRESS

We hear echoes of these themes in Madison’s June 6, 1787 address to the Constitutional Convention in Philadelphia. His speech cannot be isolated from those that preceded it, so I will briefly summarize them, as they were recorded in his notes. Charles Cotesworth Pinckney opens the day’s business by moving to debate Resolution Four of the Virginia plan, which determines the mode of electing representatives to the first branch of the national legislature. Pinckney suggests that the states should make the appointment; Elbridge Gerry agrees. Gerry remarks that the example of the state governments demonstrates that democracy threatens liberty, and the “worst men” often get into the state legislatures. Somewhat ironically in light of this thought, Gerry then states that he believes allowing the state legislatures to make the appointment would “secure more effectually a just preference of merit.” James Wilson retorts that government should possess the strength and “the mind or sense” of the people. He opines that large districts tend to preclude bad elections; in an identical thought to Madison’s, he declares that abuses “proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.” Roger Sherman speaks up to argue that if the state governments are not to be abolished, there must be some kind of federalism or harmony between the state and the national governments. He then makes a remark that directly paves

the way for Madison's intervention. Sherman suggests, in the short-hand of Madison's notes, that the objects of union are

1. defence ag[ain]st. foreign danger, 2. ag[ain]st. internal disputes & a resort to force, 3. Treaties with foreign nations, 4. regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States.

Sherman concludes that "the people are more happy in small than in large States," while conceding that "[s]tates may indeed be too small as Rhode Island, & thereby be too subject to faction." Colonel Mason suggests that "proper elections" and superior delegates are more likely to issue from popular elections of the first branch of the national legislature rather than from appointment of national legislators by the state legislatures.

Now Madison speaks. He begins by arguing in favor of Resolution Four as written since democracy in at least one branch of government is a "clear principle of free gov[ernment]." Properly regulated, a system of popularly elected national government will produce "better representatives" and diminish the influence or meddling of the states in the central government. But a national government would have more purposes than Sherman suggests. Its additional objects would be to provide for the "security of private rights" and a "steady dispensation of justice." Threats to "republican liberty" and the failure of the state and central governments to procure the two additional, and in Madison's mind, primary ends of government, "had more perhaps than anything else produced this convention." Addressing Sherman's advocacy of state legislatures appointing delegates to the national legislature, Madison attempts to turn one of Sherman's observations against the Connecticut delegate's position. Sherman, Madison says, had admitted that in very small states "faction & oppression w[ould] prevail. It was to be inferred then that wherever these prevailed the State was too small." Abuse exists in both the largest and small-

est states. The Convention is “thence admonished to enlarge the sphere as far as the nature of the Gov[ernment] would admit.”

There are several problems with this rhetorical progression. In trying to enlist Sherman’s observation that very small states can be prone to faction against Sherman’s argument that state legislatures should appoint delegates to the national legislature, Madison disregards Sherman’s more general contention the people in smaller states are happier than people in larger ones. While Madison’s notes do not record Sherman as offering reasons or evidence for this, Sherman’s opinion alludes to a conventional defense of traditional republicanism. That argument is that for republics to function well and conduce to the human flourishing for which their most famous citizens are renowned, they require small populations and geographic territories. Although not explicitly confronted with this challenge to his project, Madison could certainly have extricated and made an effort to refute it. Instead he offers an implicit argument against this view with a problematic if not unsupported inference: “wherever [faction and oppression] prevailed the State was too small.” This conclusion ignores the possibility of a small state with little faction and oppression (Sherman’s home state of Connecticut, for example); that of a state so large or diverse that its people enjoy less flourishing and its political life less stability than do the equivalents in smaller societies, of which, admittedly, Madison’s historical vantage point would not have afforded him many examples; and that of a large state whose government is nonetheless dominated by faction and oppression, which Madison explicitly countenances in the sentence following his inference.

We must not assume that Madison was unaware of these problems. Rather, they suggest that his rhetorical strategy is to educate rather than deliberate with his audience, to shift its attention from a myriad of republican possibilities to one whose choiceworthiness he is persuaded of but which he is aware nonetheless exhibits characteristics to

which his audience would object, perhaps fatally for his plan. Madison's concession in this speech that faction is a problem in large as well as small states, for instance, suggests that the dyke of diversity republicanism protecting the national government from the seas of factious oppression is not as watertight as his surface presentation indicates. Thus, while it is clear Madison believes that the advertised primary effects of diversity republicanism will meet the standard of necessity for solving the problem of faction, it does not alone meet the standard of sufficiency. From what we have seen thus far of Madison's rhetorical method in these few introductory remarks of the June 6th speech, the logic of his statements concerning the psychology of popular opinion, and the lack of wisdom in the general population, we are led to conclude that Madison does not seek a completely thorough and sincere debate, even among the relatively outstanding intellects of the Convention, on the merits of his proposal. What we have here for the first time are strong indicators that the interaction or kinship between Madison's rhetorical method in propagating his modern form of republicanism and his view of human nature is the key to unlocking the full design and implications of his project.

From his riposte to and problematic inference from Sherman's speech, Madison delves into his second version of the diagnosis of and solution to the problem of faction. Little differs from the common template until he discusses the inefficacy of conventionally supposed constraints on factions. In the spirit of other delegates' frequent recursions to historical argument, he suggests that his "observations" on the failure of these restraints are confirmed by three examples of ancient and recent history. The first is the colonialism of Greece, Rome, and Carthage of their respective colonies; the second is the colonialism of Britain of her American colonies; and the third is slavery in the United States. The source of American resistance to British colonialism was American national interest and pride: "G[reat] Britain had a separate interest real or supposed, & if her authority had

been admitted, could have pursued that interest at our expence.” But the real light this excerpt sheds on the object and trajectory of Madison’s national project of diversity republicanism comes from his remark on slavery. “We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man.” Just as Great Britain had a separate interest from that of her colonies which could be prosecuted at their expense, so American slave-owners have a separate interest from that of their slaves, which is pursued to the absolute oppression of the latter. What could be a more appropriate or more compelling example of a majority’s abusing the rights of a minority than American slavery? The juxtaposition of the egregious injustice of slavery to that of Britain’s exploitation of the American colonies suggests that America’s peculiar institution is the factious oppression of precisely the kind that any political system which is designed to dispense justice and protect minority rights must address.

The final salient novelty of Madison’s June 6th speech is the phrasing of the first effect of diversity republicanism. The only solution to the problem of faction

is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d. place, that in case they sh[ould] have such an interest, they may not be apt to unite in the pursuit of it.

In the other versions of this statement, Madison claims that diversity republicanism will preclude a majority from feeling or identifying a common interest or passion around which it can unite to oppress a minority. Here, he signals that diversity republicanism will function in a deeper sense than by merely preventing recognition of a possible shared motive for oppression, by instead transforming the majority’s interest and rendering it commensurate with, or one and the same as, that of society as a whole.

This is a wholly new portrait of the workings of diversity republicanism. Madison does not spell out its contours, or by precisely what logic a “divided” society is less likely to produce legislative majorities that will oppress minorities. Nor is it clear why, “in the 2d. place,” once a majority has recognized a common interest whose pursuit would oppress minorities, it would be any less “apt” to pursue it. The whole prior presentation of diversity republicanism (and for the matter, the overwhelming subsequent portrayal of the same) emphasizes the occlusion of the majority’s process of interest-recognition by a plausible if not empirically proven political logic. The unanswered questions this new phrasing raises, combined with Madison’s earlier problematic inferences and his deflection of a pregnant opportunity to engage in a debate over the comparative merits of small and large republics, are yet further indicators Madison is engaged in a rhetorical strategy to persuade his audience of the advantages of his proposed system rather than to expound it wholly in one place with total theoretical candor. Thus the first implication we can draw from the convention address is the support it lends the hypothesis animating our investigation into Federalist 10 through an examination of its preceding versions. The second insight is connected to the first. Reconciling this hypothesis with Madison’s demonstrated awareness of the problem of the lack of wisdom in democratic political life we first saw in the Vices suggests that his rhetoric has as its end political persuasion, or, to do justice to its role in his project as a whole, education. Madison’s decision to attempt to educate his audience rather than to deliberate with it exposes his judgment of the rational faculties of most persons, even such eminent and superior persons as were members of the Philadelphia Convention, as, to anticipate Federalist 10, “fallible.” His constitutional statesmanship, comprised of his constitutional vision and the rhetoric with which he attempts to attract support to that vision, is therefore linked to his theoretical reflection on

the rational capacities of human beings, and the array of ills, political and private, which imperfections in those capacities engender.

In light of the above, revisiting the remarkable claim with which Madison begins his convention address evinces its educative purpose. Where he does not actually instruct, he pointedly reminds his audience that the end of good government is the protection of “republican liberty” and individual rights. This reminder reveals Madison’s confidence that his constitutional proposals are the best means to those ends. Finally, Madison unequivocally signals that slavery is in the crosshairs of any constitutional project whose ends he has adumbrated. But he does not spell out the manner in which diversity republicanism alone, to the extent he has so far elucidated it, can provide a solution to slavery. Whites in slave states have already recognized their status as a majority and if not their common property interest, then certainly their common security interest in preserving slavery. How then can diversity republicanism eradicate it?

THE LETTER TO JEFFERSON

If Madison has thus far built an arch whose legs do not quite meet, he supplies its keystone in his October 24 letter to Jefferson. This correspondence, perhaps due to its character as the most private of the four writings, is unique in the degree of its theoretical candor, though also somewhat perplexing in its failure to adumbrate points that, in light of that candor, one would expect to be more fully explained. The crucial missing piece of Madison’s plan of government appears not in his third account of faction, but in the framing of that account within the letter. One of the purposes of the letter is to update Jefferson, who at the time of its composition was the Confederation’s envoy to France, on the debates and output of the Philadelphia Convention which had adjourned the month previous. To that end, Madison discusses the direct and unmediated relationship between the

national government and the citizens of the states; the consequent “change in the principle and proportion of representation” in the national legislature; the executive; and the Senate. He then reaches the question, fiercely contested at the Convention, of “the due partition of power between the General & local Governments,” that is, of the locus of sovereignty in the proposed political regime.

Madison emphatically contends that every political system must either unambiguously locate sovereignty in the central government or, if forced by political necessity to divide sovereignty between the central and “subordinate” governments, provide the former with a “controuling power” with which it may deflect encroachments from the subordinate entities on its exclusive legislative domains and prerogatives. Both historical and theoretical reasons prove this necessity. Historically, the characteristic political danger of confederations has been the harm from member states to the confederation’s integrity and unity and not any harm, frequently spoken of at the Convention and in the state ratification debates, from the central government to the rights of the member states and the states’ inhabitants. At a theoretical level, the problem is one of distinguishing supposedly different powers and domains of power. Presaging a conflict at the core of the political development of federalism, Madison notes, for example, that “[t]he line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found on fair discussion, to be absolutely undefineable.” Similarly, the Montesquieuan categories of executive, legislative, and judicial powers, “though in general so strongly marked in themselves, consist in many instances of mere shades of difference.” If the boundaries of power between the different institutions of government are so ambiguous as to be reasonably contested by those institutions, it follows that the boundaries between wholly distinct governments that nonetheless possess coincident and in some cases identical powers and legislative domains will

be the cause of much more acrimonious and heated contestation. This jealousy will be especially acute on the part of the states for reasons we have already seen. When the central government acts in domains it shares with the states, the latter “will be continually sensible of the abridgement of their power, and be stimulated by ambition to resume the surrendered portion of it” just as “the representatives of Counties and Corporations in the Legislatures of the States, [will be] much more disposed to sacrifice the aggregate interest, and even authority, to the local views of their constituents, than the latter to the former.”

So Madison locates the root cause of the prospective ills of American federalism in a lack of wisdom by pointing to the unbridled myopia and narrow self-interestedness endemic to state politics. The meritocratic leadership filters and faction-obviating size and heterogeneity of diversity republicanism solve these problems in the national government. But these benefits of diversity republicanism require a large, diverse political jurisdiction and large electoral districts. The states lack the requisite level of heterogeneity and size. The only way, therefore, in which the effects of diversity republicanism can be brought to bear on the states, is through the regulation of states’ affairs by an external power that exhibits those effects. Here then, is the final piece of Madison’s project of rational democratic administration in the United States: not just a parchment commitment to national supremacy, but a constitutional politics of national supremacy rooted in the explicit constitutional prerogative of the national government to oversee the legislation of the state governments. With due credit to Michael Zuckert, and to appropriate his appellation, I will call this crucial component of Madison’s vision for constitutional politics, though missing from the Constitution, corrective federalism.

The form of corrective federalism Madison envisioned, and sought fervently at the Philadelphia Convention, was a plenary veto power over state laws vested in the na-

tional legislature. The locus of corrective federalism that would ultimately develop in the United States, namely, in the judiciary, Madison rejects as both impractical and unlikely.

[I]t is more convenient to prevent the passage of a law than to declare it void after it is passed; [] this will be particularly the case, where the law aggrieves individuals, who may be unable to support an appeal ag[ain]st a State to the supreme Judiciary; [and] a State which would violate the Legislative rights of the Union, would not be very ready to obey a Judicial decree in support of them[.]

For these and other reasons, the national government needs the explicit power to void state laws.

Corrective federalism perfects Madison's vision for constitutional politics. If the purpose of diversity republicanism is to impede factious majorities from invading the rights of minorities, it is not sufficient that the national government be free of faction. Instead, the national government must have the power and the will to prevent factious abuses in the state governments. To bring this analysis full circle, consider once more the factious cleavages Madison enumerates in the common template. A striking omission is that between states. Yet he does include a cleavage between "inhabitants of different districts." What are the most politically salient of such districts in the United States? The name of the polity tells us the answer. While factions continue to ravage state politics they will make states dangerous to the national government. Thus to the mechanisms of nationalism and diversity republicanism must be added corrective federalism. Corrective federalism solves the riddle by eradicating in the state governments the effects of the disease which the first two can contain only in the national government.

Madison delivers a few remarks on the general theoretical rationale for this dynamic institutional, rather than merely parchment, solution to the problem of enduring political pathologies endemic to a polity. Specific safeguards against particular evils do not correct the structural tendency of the political system to enact unjust policies but only

“suppose[] the disposition which will evade it.” The legislature will find an “infinite of [] expedients” by which to circumvent the spirit if not the letter of supposedly ironclad prohibitions on certain behaviors to which it is prone. For this reason, a political system’s inclination to peculiar kinds of injustice “can only be controuled by some provision which reaches all cases whatsoever.”

Now Madison’s comment on slavery in the June 6th Convention speech assumes its full significance. At the Convention Madison did not get his wish of a national veto over state laws, and because he did not, the structure of the project he devised and wished to implement differs crucially from that of the Constitution. Insofar as one of the purposes of the Constitution was to structure power at the national level to obviate factions not just in the national legislature, but in American politics generally, the plan lacked an essential tool for rooting out a problem that, while circumscribed to the state governments, would cascade into an existential challenge to that imperfect political order. The logic of Madison’s arguments suggests he may have foreseen as much, and sought a national government with the power to meet that contingency if it did occur, and ideally to obviate it in the first place.

Subsuming item 10 of the Vices, Madison continues his third account of the problem of faction by calling Jefferson’s attention to “the mutability” as well as the injustice of state laws. Here he again tips his hand, contending that the problem with the state governments is not simply their being rife with faction and abusing the rights of minorities, but a lack of wisdom in their administration which arises partially from factions’ single-minded pursuit of the private interests they represent, and partially from the parochial and middling character of the people who can attain state office in such small electoral districts. Just as he made explicit in the Vices, the quality of most state legislators is such that they simply cannot be counted on to be in any degree wise or judicious, only narrow-

ly calculating and self-interested. Madison confirms with his attack on the “mutability” of state laws his previous indications that diversity republicanism would not only curb faction but would also better secure wisdom in public administration.

He proceeds to unfold his account of faction, following the template closely. The next novel digression from the template is an extremely important one. While heretofore Madison has described the problem of faction as an empirical fact, a political given that must be dealt with, for the first time he inquires explicitly into its causes and the possibility of eradicating it at the source, rather than, as he has so far advised, containing its reach and ameliorating its effect. The most eligible alternative to a large republic, and the alternative that many opponents of the Constitution believe most capable of this possibility, is the traditional republic. The protection of minority rights in such a system is founded on “the idea, that the people composing the Society, enjoy not only an equality of political rights; but that they have all precisely the same interests, and the same feelings in every respect.” Such a “case [] is altogether fictitious” as “no society ever did or can consist of so homogeneous a mass of Citizens.” However, were such a homogeneity possible, the reasoning of the proponents of traditionally conceived republicanism “would be conclusive.” Then

[t]he interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which the major voice would be the safest criterion; and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed.

The equality of political rights, opinions, and sentiments upon which such republics depend is destroyed by the institution of private property, which necessarily entails an inequality in the distribution of property because persons possess “unequal faculties of acquiring it.” Once persons own different amounts and species of private property, their

self-interest compels them to support policies that augment their personal wealth, and defeat those that do the opposite. From the most basic inequality in faculties of acquiring property arise the divisions around which factions coalesce: “[t]here will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest.” Madison terms these cleavages along which factions form “natural distinctions,” as opposed to “artificial ones,” which arise from “accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals.”

Madison’s sociological account of the origins of factious cleavage turns on this last crucial dichotomy. His appellation for the first source of cleavage, differences in material interest resulting from an inequality of property, is “natural.” Though Madison does not expound this distinction, there are three plausible constructions of his use of the word “natural.” The first is that differences in property are natural because they are rooted in man’s innate or natural qualities: they arise from the diversity, that is, the inequality, of persons’ innate faculties of property acquisition. The second is that such differences are natural in the sense of being required or confined by necessity, as by laws of physics. In this view, the inequality of private property is a direct and necessary consequence of the protection of private property. The third is that differences in property interests entail a moral character or normative hue such that their preservation, i.e., the protection of private property, is an end, if not the end, of society. All three of these constructions of natural seem to me to be consistent with Madison’s portrayal and demonstrated understanding of man and society. However, it is more than a little curious that Madison employs the term natural to describe facets of an institution which is itself radically conventional. Property does not exist, or certainly lacks regular and dependable protection, in the “savage state” or outside of “civilized societies.” Additionally, persons would seem to arrive

ineluctably at a diversity of opinions, if not by differences in their innate faculties alone then in the interactions between those faculties and diverse environments or upbringings. Why then call property distinctions natural, especially when their artificial opposites, “accidental differences” in opinion, seem to be as much if not more natural, at least by the first two of the three criteria above? Madison’s dichotomy appears to hold up only if we take him to mean natural in the third sense. This realization unveils for us another prong of Madison’s rhetorical strategy, and an important insight into his understanding of the proper ends of government.

Madison’s natural/artificial distinction is yet another attempt to educate rather than illuminate his audience, for he does not spell out the complex but important reasoning that underlies that distinction. Factions predicated on property are inevitable in a free society. Furthermore, such factions are good for society because their property interest binds them to the society which regulates, protects, and guarantees their private property. On the other hand, factions predicated on opinion often pursue objectives that do not align with the political health and even survival of society, especially when such opinions derive from religion or other species of passion. So in response to his original inquiry of whether it is possible to give a people the same interests and opinions, Madison concludes that it is impossible to do the former but advisable and therefore possible, at least partially, to do the latter: a people can be instructed in the proper functions and ends of government, and a government properly constituted can direct their attention and energies into peaceful and therefore controllable if not wholly salutary channels. Finally, Madison shows that a delegitimization of factions based on passions or opinions is meant to forestall a whole zone of irrational and potentially destructive political contestation: “[h]owever erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman or the benevolent philosopher, the bulk of mankind who are

neither Statesmen nor Philosophers, will continue to view them in a different light.” The contrast between the “bulk of mankind” on the one hand and the “enlightened Statesman” and “benevolent philosopher” on the other, suggests that the success of factions based on opinion are attributable to the broader lack of wisdom in political life. So acute is the danger from this species of faction that Madison relies on a partially pedagogical or civic-educational as opposed to a wholly institutional solution. While he generally and putatively rejects the answer of a traditional republic to the ill of faction, here he sees fit to employ it as a lubrication of or aid to his otherwise predominately institutional solutions. Thus, as Jeffrey Tulis has observed, though Madison eschews the possibility of homogenizing the opinions of Americans on a wide range of contentious issues through a common moral or civic education, he attempts to homogenize their opinion on the impropriety of the government’s administration or regulation of competing moral or religious visions.

At the same time as Madison attempts to eviscerate the power of such conflicts and confine their residue to private life, he indicates that diversity republicanism will also ameliorate the potential threat of religious sectarian strife, albeit, because of diversity republicanism’s different purpose in doing so, according to a modified logic than that by which it obviates the problem of interest factions.

In a large Society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority and have the power, other sects will be sure to be depressed. *Divide et impera*, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles.

Religious liberty finds its refuge in religious diversity. But when one considers the design of the policy Madison proposes, it becomes clear that religious liberty is a secondary effect of the solution to the problem of religious faction. That policy—*divide et impera*—is a markedly negative rhetorical twist on his heretofore moderate illustrations of diversity republicanism. Indeed, it is significant that he invokes this moniker for the first and only time in the context of the application of diversity republicanism to religious sects. The solution to that threat or possibility is to ensure a sufficient sectarian diversity such that no sect can comprise a majority and commandeer the levers of government to the detriment of other sects. But in what sense is there a “dividing and conquering”? To put it differently, who or what is performing the dividing and conquering? Diversity republicanism does not divide or conquer factions; it structures factions’ pursuit of their interests to check one another and to prevent factions from recognizing they could comprise a majority with an oppressive goal. And while diversity republicanism can achieve the former with respect to religious sects, it cannot achieve the latter where there is a sectarian majority, for a common religious identity is too salient to be hidden from those who share it. The dividing, therefore, must be performed by some safeguard for freedom of conscience, which produces religious diversity, and the conquering must be carried out by some mechanism to ensure the supremacy of positive or secular law to religious dictates or aspirations. But the secular law can be supreme only if it can be made fully independent of and extricated from religious law. Hence we have Madison’s solution to the problem of religious faction which, though it possesses a similar structure to that of his solution to the problem of interest faction, is distinct in its delivery, purpose, and effect. In keeping with his overriding pedagogical and civic-educational intent, Madison mutes his presentation of the threat to political order from religious sects to teach simultaneously that religious contestation is wholly inappropriate in politics and that to the extent reli-

gious contestation must occur, it should be confined to the venue that ensures its occurs least: private life. The purpose of Madison's solution to religious faction is not judiciously and fairly to administer what Madison views as the ultimately indeterminable competing claims of irrational fanaticisms but to shield the state and national governments from serving as the stage for such debates, and thereby to quarantine them from the manifold risk of religious conflict. The effect is to confine public debate to the secular plane of reason, to exclude that of metaphysical speculation, to diminish in the long term the political salience of religious difference and ultimately the bite of religious principle in private life.

FEDERALIST 10

Federalist 10 is an astounding work, the diligent exposition of whose genius would require many dozens of pages. Most readers of this work will be familiar with its structure, so even though its progression differs considerably from that of the common template, I will not recount it. Furthermore, as I believe I have helped illuminate much of the purpose and logic of the argument in Federalist 10 by examining the three preceding accounts, I will confine myself here to extracting from Federalist 10 three particularly salient insights that consummate my analyses of the themes explored in the previous versions.

For a work that endeavors to explicate Madison's full solution to the problem of faction, the most fitting place to begin in Federalist 10 is with its author's famous definition of faction.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

This definition exposes and confirms a distinctively modern conception of political community. Madison's emphasis on individual rights, his decision to invoke the notion of "the permanent and aggregate interests of the community" instead of the more traditional concept of a "common good," and his failure to provide a justification for or explanation of those important choices suggests that the definition, like so much of his rhetoric, has an educative rather than illuminative purpose. The definition teaches that citizens in a large and diverse society will not share a true common good, or much more than a few fundamental interests. A common good conventionally signifies a communal *telos* or end more encompassing than and ostensibly superior to the mere preservation of the community. Following Enlightenment thought, Madison appears to believe that conceiving of the political community in such terms does more harm than good. Like many quotidian political locutions, "common good" has no essential content but the particular moral vision for society of which the person who invokes it intends to persuade others. The political effect of admitting its use is to invite interminable debate about the ends of society. Worse still, doing so affords theoretical grounds and practical encouragement to factions to attempt to impose their passionate private visions of morality, be they religious or secular, on the public administration. It is not only safer but also more accurate to think in terms of interests, of which there is only one that all citizens truly share in a large, diverse society. The only such common fundamental interest is the interest of every citizen in the protection of his economic, civil and political rights, whose expression will differ, and hence whose derivative private interests will differ, from those of other citizens. Every citizen, therefore, has a marked interest in the preservation of the government which protects his rights and adjusts and regulates his particular private interests. The true permanent and aggregate interests of the community, then, are the preservation of the govern-

ment and the procuring of political conditions that best conduce to the endurance and health of that government, namely, the Constitution and diversity republicanism.

For purposes of this work, the most illuminating passage in Federalist 10 is Madison's treatment of the "latent causes of faction . . . in the nature of man" and their manifestations in political life. The first such cause is the diversity of man's opinions. Madison describes the origins of that diversity in a cryptic account whose logic, when drawn out, I believe can be expressed as follows. Man's reason is fallible. But man relies on his reason to create his opinions; therefore man's fallible reason creates false opinions. A connection exists between man's "reason and his self-love" or his pride such that he is proud of his reason and its products. Self-love or pride is a passion; this and other passions attach to and become bound up with opinion. Hence man exhibits a passionate attachment to his opinions, even though they began as and ultimately remain flawed works of his imperfect reason. Disagreement with his opinions, even the benign attempt to correct or refine them, impugns his pride and is construed as a denigration of his reason and hence his capacity for self-rule. Man's pride rallies his passions to defend his false opinions as they would defend his very freedom, for the excellence of his reason constitutes, at bottom, his claim to self-rule and hence to freedom.

This compelling portrait of the operation of man's psyche points to two conclusions. The first is that, as we have long seen, a preponderance of persons possessing fallible rational faculties, or to say the same thing, a lack of wisdom, is the efficient cause of the worst species of faction and injustice in democratic political life. The second helps us to appreciate fully the fundamental form and objective of Madison's rhetoric, of which before now we have had many examples but an incomplete understanding. Madison's account of the psyche shows us that he has only obliquely discussed the lack of wisdom characteristic of democratic political life precisely because calling attention to it too une-

quivocally or insistently is sure to impugn the pride and incite the passionate opposition and enmity of his audience. He therefore focuses the attention of his audience on a particularly conspicuous symptom of the more opaque underlying problem. By affording his audience the goal of eliminating faction and not one of obtaining wisdom, he respects its pride and sets its sights on an achievable objective the very pursuit of which, even if the objective is never perfectly attained, is salutary for political life. In keeping with his rhetorical purpose of education rather than illumination, Madison thus finds a way to minimize some of the effects of a lack of wisdom without drawing attention to its real character and thus without being required to reveal to his audience the problems with its own unstated but apparently self-evident claims to political rule.

If securing the coincidence of wisdom and politics is the foundational challenge to which Madison has been addressing himself, we see in his discussion of the second source of faction in man's nature, or the inequality of property, that the primary end or "first object" of government is to produce rational persons who are more likely to possess the wisdom necessary for political rule. Echoing his treatment of this question in the letter to Jefferson, Madison explains that "[t]he rights of property" originate in "the faculties of men" and that there is a diversity of, an inequality in, such faculties. So important are these faculties that their protection "is the first object of government." He then refers to "faculties of acquiring property," and states that from the protection of the same "the possession of different degrees and kinds of property immediately results." Initially it appears that Madison is referring to the same kinds of faculties throughout his discussion, but on closer inspection we see that he qualifies "faculties" as "faculties of acquiring property" only after he declares the first object of government to be the protection of man's "faculties" simply. The question, then, is whether by "faculties" simply Madison means "faculties of acquiring property" throughout his whole discussion or whether, by

some sleight of hand, Madison has only implied that “faculties” simply are “faculties of acquiring property” when they in fact entail something broader. This latter interpretation seems more plausible: why else would he begin to qualify “faculties” consistently only after he has stated that their protection is the first object of government? The lesson we derive, once again, is an insight into Madison’s rhetoric. His surface presentation is a subtle modification of the conventional liberal argument that the end of government is the preservation of man’s property to the contention that the end of government is the protection of the faculties by which men acquire property. But Madison’s plain words are susceptible of and indeed invite a much more radical construction of the purposes of government. If the first object of government is to protect man’s faculties or abilities, its role is much more central to his development and fulfillment as a human being, and its domain and reach is much broader, than if its end is to guarantee to its citizens the fruits of their acquisitiveness. The national government Madison envisions is at once more rational and utilitarian in its effect, more invasive in its reach, more powerful in its design and more ambitious in its objects than any that has preceded it.

The final section of Federalist 10 that I will consider here is Madison’s portrayal of the way in which diversity republicanism will contain religious sectarian faction. We saw in the letter to Jefferson that Madison has been pondering ways to ameliorate this particularly dangerous threat, and that the logic of his analysis points to the need for constitutional provisions for disestablishment and freedom of conscience. Yet there is no mention of those requisites in his treatment in Federalist 10. In the penultimate paragraph of that account, Madison claims the national government will function as a secular bulwark against the religious sectarian contagion of distinct regions of the country. Echoing the distinctive language with which he discusses religious passion in the common template, Madison avers that “[t]he influence of factious leaders may kindle a flame within

their particular States, but will be unable to spread a general conflagration through the other States.” However, as we have seen, while the logic of diversity republicanism applied to religion, that is, the security or preservation of religious freedom through a diversity of religious sects, protects the public councils from infection and domination by a specific religious sect, the electoral structure of diversity republicanism does not do so directly but requires provisions for disestablishment and freedom of conscience. Madison’s failure in Federalist 10 to highlight the need for these crucial provisions, or even to present a more positive version his suggestion in the letter to Jefferson that religious factions must be managed by “the reprobated axiom of tyranny,” confirms our initial hypothesis that Federalist 10, at least in many regards, has a political and not an illuminating purpose. So too, finally, does Madison’s assertion that diversity republicanism will prevent religious “conflagrations” throughout the states, when it is clear from the previous versions that such a task would be greatly aided by, if it did not outright require, corrective federalism.

CONCLUSION

From our examination of Madison’s four versions of the problem of faction we can deduce a number of conclusions that consummate the incomplete and partially rhetorical treatment of faction with which we are most familiar in Federalist 10. Expounding and collating these conclusions are the first steps toward answering the questions that appear at the beginning of this work and were its initial theoretical impetus. The conclusions that I have developed throughout this work and that I will highlight below are derived from the complex interaction between Madison’s shifting rhetoric, his distinct audiences, and the substance of his thought, and are not entirely extricable and intelligible outside of this network of relationships. Nonetheless, each encapsulates a crucial aspect

of Madison's project that must be considered in any cogent attempt to apprehend the logical unity of his understanding of man and attendant vision for politics.

The most important insight of the foregoing inquiry is that Madison views a lack of wisdom, and not the prevalence of faction, as the fundamental pathology of American politics under the Articles of Confederation. His emphasis on faction is a rhetorical strategy calculated to show a need for political mechanisms whose putative object is to curb faction but whose intended purpose and effect is to provide for wisdom in American public administration. They do so in part by curbing factions, which creates the requisite political space for wise administration, but primarily by recruiting "individuals of extended views, and of national pride" into the national government (Vices). Madison, however, opts to obscure the true character of the primary pathology of American political life. Man's reason is fallible yet he is proud of his reason and passionately attached to his false opinions. A forthright diagnosis of the underlying cause of the country's political ills, regardless of its author's intentions, would necessarily impugn the reason of his audience and its claim to participate in political life, virtually ensuring its enmity and resistance to his prescriptions. Hedging against this possibility while accruing support for his constitutional vision accounts for the rhetoric he employs in every account of faction, public and private. The Vices and the letter to Jefferson, though private and therefore in many respects less guarded with respect to the topics they traverse, nonetheless employ this fundamental rhetorical strategy. Finally, despite his seemingly undemocratic view of the underlying pathology of American political life, Madison is still a democrat, although more for utilitarian than philosophic reasons: not only does a popular base in government ensure government will not neglect the rights and interests of the people, but also no other regime is palatable to the sensibilities of his audience.

Because, at least in Madison's view, reason or wisdom, not popular will, dictates political right, another important aspect of his constitutional project he downplays but nonetheless acknowledges is the sacrifice of representation to wise administration the regime will entail. As we saw explicitly in the Vices, and as is apparent in every instance in which Madison touches upon the meritocratic leadership filters of diversity republicanism, wisdom, cosmopolitanism, and national ambition are not commonplace personal characteristics. Indeed, the whole logic of diversity republicanism is predicated on their being rare. The import of this fact for American national politics, then, is that they will be much less representative, less republican, than is implied by the unproblematic continuity between a modern republic and a traditional republic that Madison's rhetorical portrait paints. To procure institutional filters that exclude average persons from political office is ultimately to confine such persons to private life and to restrict the regulation of their rights and interests, which is what will pass for politics in the new regime, to superior persons. Extrapolating from this fact, and adding to it Madison's stringent rhetorical and institutional devices intended to bar opinion and religion from the realm of legitimate political contestation, Madison's constitutional project contemplates a largely depoliticized polity, the energies and ambitions of whose citizens are emancipated to pursue their peculiar private advantages.

Expounding the accounts of faction that precede Federalist 10 has also shown what the portrait of representative government in the latter lacks, and requires for its completion. The only hope of preventing the violence of faction and solving the problem of unwise public administration in American politics rests in a plenary power of corrective federalism, which Madison tells us in the letter to Jefferson will be most effective in the form of a national veto over state laws. Because Federalist 10 is an account of the representative politics of the Constitution, and because the Constitution lacks corrective fed-

eralism, the account of and solution to faction in Federalist 10, however rhetorically confident, is radically inadequate. So too, for reasons we just extricated, is Federalist 10's portrayal of the capacity of diversity republicanism for quarantining religious sectarian contagion and eliminating religious sectarian strife.

Finally, we have learned that Madison's rhetoric and political project are inextricably linked. His rhetoric is not only derived from the same science of man that produced his new technology of politics, but also an integral part of his political project. It is so in two ways. First, as we have already seen briefly in this section, Madison's rhetoric is designed to have a political effect: to win support for the Constitution while obfuscating the true design and purpose of the constitutional order. Second, his rhetoric serves as a civic-educational or pedagogical supplement to his otherwise uniformly institutional solutions. Madison tries to give his audience a common opinion as to the proper ends of government and the legitimate objects of political contestation, while purportedly eschewing any attempt to limit factious strife and increase political stability by homogenizing opinions in a large and diverse society. His rhetoric instills in us salutary opinions that his constitutional order needs to function smoothly, while revealing the limit of his confidence in the capacity of institutions to procure good government and wise administration. Madison's constitutional project, in the final analysis, requires an indigenous wisdom which he cannot create or provide, but which he can only design institutions to select for in its members and marginally encourage in the general population. We see in the end that Madison's rhetoric does not vary considerably between the public and the private accounts, but that each of the first three accounts traverses a number of unique topics whose consideration is necessary to the full elucidation of the logic of the constitutional order Madison only partially adumbrates in Federalist 10.

Appendices

THE VICES OF THE POLITICAL SYSTEM OF THE UNITED STATES

April 1787

1. Failure of the States to comply with the Constitutional requisitions.

This evil has been so fully experienced both during the war and since the peace, results so naturally from the number and independent authority of the States and has been so uniformly exemplified in every similar Confederacy, that it may be considered as not less radically and permanently inherent in, than it is fatal to the object of, the present System.

2. Encroachments by the States on the federal authority.

Examples of this are numerous and repetitions may be foreseen in almost every case where any favorite object of a State shall present a temptation. Among these examples are the wars and Treaties of Georgia with the Indians—The unlicensed compacts between Virginia and Maryland, and between Penna. & N. Jersey—the troops raised and to be kept up by Masss.

3. Violations of the law of nations and of treaties.

From the number of Legislatures, the sphere of life from which most of their members are taken, and the circumstances under which their legislative business is carried on, irregularities of this kind must frequently happen. Accordingly not a year has passed without instances of them in some one or other of the States. The Treaty of peace—the treaty with France—the treaty with Holland have each been violated. [See the com-

plaints to Congress on these subjects]. The causes of these irregularities must necessarily produce frequent violations of the law of nations in other respects.

As yet foreign powers have not been rigorous in animadverting on us. This moderation however cannot be mistaken for a permanent partiality to our faults, or a permanent security agst. those disputes with other nations, which being among the greatest of public calamities, it ought to be least in the power of any part of the Community to bring on the whole.

4. Trespasses of the States on the rights of each other.

These are alarming symptoms, and may be daily apprehended as we are admonished by daily experience. See the law of Virginia restricting foreign vessels to certain ports—of Maryland in favor of vessels belonging to her own citizens—of N. York in favor of the same.

Paper money, instalments of debts, occlusion of Courts, making property a legal tender, may likewise be deemed aggressions on the rights of other States. As the Citizens of every State aggregately taken stand more or less in the relation of Creditors or debtors, to the Citizens of every other States, Acts of the debtor State in favor of debtors, affect the Creditor State, in the same manner, as they do its own citizens who are relatively creditors towards other citizens. This remark may be extended to foreign nations. If the exclusive regulation of the value and alloy of coin was properly delegated to the federal authority, the policy of it equally requires a controul on the States in the cases above mentioned. It must have been meant 1. to preserve uniformity in the circulating medium throughout the nation. 2. to prevent those frauds on the citizens of other States, and the subjects of foreign powers, which might disturb the tranquility at home, or involve the Union in foreign contests.

The practice of many States in restricting the commercial intercourse with other States, and putting their productions and manufactures on the same footing with those of foreign nations, though not contrary to the federal articles, is certainly adverse to the spirit of the Union, and tends to beget retaliating regulations, not less expensive & vexatious in themselves, than they are destructive of the general harmony.

5. want of concert in matters where common interest requires it.

This defect is strongly illustrated in the state of our commercial affairs. How much has the national dignity, interest, and revenue suffered from this cause? Instances of inferior moment are the want of uniformity in the laws concerning naturalization & literary property; of provision for national seminaries, for grants of incorporation for national purposes, for canals and other works of general utility, wch. may at present be defeated by the perverseness of particular States whose concurrence is necessary.

6. want of Guaranty to the States of their Constitutions & laws against internal violence.

The confederation is silent on this point and therefore by the second article the hands of the federal authority are tied. According to Republican Theory, Right and power being both vested in the majority, are held to be synonymous. According to fact and experience a minority may in an appeal to force, be an overmatch for the majority. 1. If the minority happen to include all such as possess the skill and habits of military life, & such as possess the great pecuniary resources, one third only may conquer the remaining two thirds. 2. One third of those who participate in the choice of the rulers, may be rendered a majority by the accession of those whose poverty excludes them from a right of suffrage, and who for obvious reasons will be more likely to join the standard of sedition than that

of the established Government. 3. Where slavery exists the republican Theory becomes still more fallacious.

7. want of sanction to the laws, and of coercion in the Government of the Confederacy.

A sanction is essential to the idea of law, as coercion is to that of Government. The federal system being destitute of both, wants the great vital principles of a Political Constitution. Under the form of such a Constitution, it is in fact nothing more than a treaty of amity of commerce and of alliance, between so many independent and Sovereign States. From what cause could so fatal an omission have happened in the articles of Confederation? from a mistaken confidence that the justice, the good faith, the honor, the sound policy, of the several legislative assemblies would render superfluous any appeal to the ordinary motives by which the laws secure the obedience of individuals: a confidence which does honor to the enthusiastic virtue of the compilers, as much as the inexperience of the crisis apologizes for their errors. The time which has since elapsed has had the double effect, of increasing the light and tempering the warmth, with which the arduous work may be revised. It is no longer doubted that a unanimous and punctual obedience of 13 independent bodies, to the acts of the federal Government, ought not be calculated on. Even during the war, when external danger supplied in some degree the defect of legal & coercive sanctions, how imperfectly did the States fulfil their obligations to the Union? In time of peace, we see already what is to be expected. How indeed could it be otherwise? In the first place, Every general act of the Union must necessarily bear unequally hard on some particular member or members of it. Secondly the partiality of the members to their own interests and rights, a partiality which will be fostered by the Courtiers of popularity, will naturally exaggerate the inequality where it exists, and even suspect it where it has no existence. Thirdly a distrust of the voluntary compliance of each

other may prevent the compliance of any, although it should be the latent disposition of all. Here are causes & pretexts which will never fail to render federal measures abortive. If the laws of the States, were merely recommendatory to their citizens, or if they were to be rejudged by County authorities, what security, what probability would exist, that they would be carried into execution? Is the security or probability greater in favor of the acts of Congs. which depending for their execution on the will of the state legislatures, wch. are tho' nominally authoritative, in fact recommendatory only.

8. Want of ratification by the people of the articles of Confederation.

In some of the States the Confederation is recognized by, and forms a part of the constitution. In others however it has received no other sanction than that of the Legislative authority. From this defect two evils result: 1. Whenever a law of a State happens to be repugnant to an act of Congress, particularly when the latter is of posterior date to the former, it will be at least questionable whether the latter must not prevail; and as the question must be decided by the Tribunals of the State, they will be most likely to lean on the side of the State.

2. As far as the Union of the States is to be regarded as a league of sovereign powers, and not as a political Constitution by virtue of which they are become one sovereign power, so far it seems to follow from the doctrine of compacts, that a breach of any of the articles of the confederation by any of the parties to it, absolves the other parties from their respective obligations, and gives them a right if they chuse to exert it, of dissolving the Union altogether.

9. Multiplicity of laws in the several States.

In developing the evils which viciate the political system of the U. S. it is proper to include those which are found within the States individually, as well as those which directly affect the States collectively, since the former class have an indirect influence on the general malady and must not be overlooked in forming a compleat remedy. Among the evils then of our situation may well be ranked the multiplicity of laws from which no State is exempt. As far as laws are necessary, to mark with precision the duties of those who are to obey them, and to take from those who are to administer them a discretion, which might be abused, their number is the price of liberty. As far as the laws exceed this limit, they are a nuisance: a nuisance of the most pestilent kind. Try the Codes of the several States by this test, and what a luxuriancy of legislation do they present. The short period of independency has filled as many pages as the century which preceded it. Every year, almost every session, adds a new volume. This may be the effect in part, but it can only be in part, of the situation in which the revolution has placed us. A review of the several codes will shew that every necessary and useful part of the least voluminous of them might be compressed into one tenth of the compass, and at the same time be rendered tenfold as perspicuous.

10. mutability of the laws of the States.

This evil is intimately connected with the former yet deserves a distinct notice as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded, before any trial can have been made of their merits: and even before a knowledge of them can have reached the remoter districts within which they were to operate. In the regulations of trade this instability becomes a snare not only to our citizens but to foreigners also.

11. Injustice of the laws of States.

If the multiplicity and mutability of laws prove a want of wisdom, their injustice betrays a defect still more alarming: more alarming not merely because it is a greater evil in itself, but because it brings more into question the fundamental principle of republican Government, that the majority who rule in such Governments, are the safest Guardians both of public Good and of private rights. To what causes is this evil to be ascribed?

These causes lie 1. in the Representative bodies. 2. in the people themselves.

1. Representative appointments are sought from 3 motives. 1. ambition 2. personal interest. 3. public good. Unhappily the two first are proved by experience to be most prevalent. Hence the candidates who feel them, particularly, the second, are most industrious, and most successful in pursuing their object: and forming often a majority in the legislative Councils, with interested views, contrary to the interest, and views, of their Constituents, join in a perfidious sacrifice of the latter to the former. A succeeding election it might be supposed, would displace the offenders, and repair the mischief. But how easily are base and selfish measures, masked by pretexts of public good and apparent expediency? How frequently will a repetition of the same arts and industry which succeeded in the first instance, again prevail on the unwary to misplace their confidence?

How frequently too will the honest but unenlightened representative be the dupe of a favorite leader, veiling his selfish views under the professions of public good, and varnishing his sophistical arguments with the glowing colours of popular eloquence?

2. A still more fatal if not more frequent cause lies among the people themselves. All civilized societies are divided into different interests and factions, as they happen to be creditors or debtors—Rich or poor—husbandmen, merchants or manufacturers—members of different religious sects—followers of different political leaders—inhabitants of different districts—owners of different kinds of property &c &c. In republican Government the ma-

jority however composed, ultimately give the law. Whenever therefore an apparent interest or common passion unites a majority what is to restrain them from unjust violations of the rights and interests of the minority, or of individuals? Three motives only 1. a prudent regard to their own good as involved in the general and permanent good of the Community. This consideration although of decisive weight in itself, is found by experience to be too often unheeded. It is too often forgotten, by nations as well as by individuals that honesty is the best policy. 2dly. respect for character. However strong this motive may be in individuals, it is considered as very insufficient to restrain them from injustice. In a multitude its efficacy is diminished in proportion to the number which is to share the praise or the blame. Besides, as it has reference to public opinion, which within a particular Society, is the opinion of the majority, the standard is fixed by those whose conduct is to be measured by it. The public opinion without the Society, will be little respected by the people at large of any Country.

Individuals of extended views, and of national pride, may bring the public proceedings to this standard, but the example will never be followed by the multitude. Is it to be imagined that an ordinary citizen or even an assembly-man of R. Island in estimating the policy of paper money, ever considered or cared in what light the measure would be viewed in France or Holland; or even in Masst. or Connect.? It was a sufficient temptation to both that it was for their interest: it was a sufficient sanction to the latter that it was popular in the State; to the former that it was so in the neighbourhood. 3dly. will Religion the only remaining motive be a sufficient restraint? It is not pretended to be such on men individually considered. Will its effect be greater on them considered in an aggregate view? quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious Ties, proves that individuals join without remorse in acts, against which their consciences would revolt if proposed to them under the like sanction,

separately in their closets. When indeed Religion is kindled into enthusiasm, its force like that of other passions, is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of religion, and while it lasts will hardly be seen with pleasure at the helm of Government. Besides as religion in its coolest state, is not infallible, it may become a motive to oppression as well as a restraint from injustice. Place three individuals in a situation wherein the interest of each depends on the voice of the others, and give to two of them an interest opposed to the rights of the third? Will the latter be secure? The prudence of every man would shun the danger. The rules & forms of justice suppose & guard against it. Will two thousand in a like situation be less likely to encroach on the rights of one thousand? The contrary is witnessed by the notorious factions & oppressions which take place in corporate towns limited as the opportunities are, and in little republics when uncontrouled by apprehensions of external danger. If an enlargement of the sphere is found to lessen the insecurity of private rights, it is not because the impulse of a common interest or passion is less predominant in this case with the majority; but because a common interest or passion is less apt to be felt and the requisite combinations less easy to be formed by a great than by a small number. The Society becomes broken into a greater variety of interests, of pursuits, of passions, which check each other, whilst those who may feel a common sentiment have less opportunity of communication and concert. It may be inferred that the inconveniences of popular States contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits.

The great desideratum in Government is such a modification of the Sovereignty as will render it sufficiently neutral between the different interests and factions, to controul one part of the Society from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the whole Society. In absolute Monarchies, the prince is sufficiently, neutral towards his subjects, but fre-

quently sacrifices their happiness to his ambition or his avarice. In small Republics, the sovereign will is sufficiently controuled from such a Sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. As a limited Monarchy tempers the evils of an absolute one; so an extensive Republic meliorates the administration of a small Republic.

An auxiliary desideratum for the melioration of the Republican form is such a process of elections as will most certainly extract from the mass of the Society the purest and noblest characters which it contains; such as will at once feel most strongly the proper motives to pursue the end of their appointment, and be most capable to devise the proper means of attaining it.

12. Impotence of the laws of the States

EXCERPT OF JAMES MADISON'S NOTES OF THE PHILADELPHIA CONVENTION

June 6, 1787

Mr. Pinkney according to previous notice & rule obtained, moved “that the first branch of the national Legislature be elected by the State Legislatures, and not by the people;” contending that the people were less fit Judges in such a case, and that the Legislatures would be less likely to promote the adoption of the new Government, if they were to be excluded from all share in it.

Mr. Rutledge 2ded. the motion.

Mr. Gerry.² Much depends on the mode of election. In England the people will probably lose their liberty from the smallness of the proportion having a right of suffrage. Our danger arises from the opposite extreme: hence in Massts. the worst men get into the

Legislature. Several members of that Body had lately been convicted of infamous crimes. Men of indigence, ignorance & baseness, spare no pains, however dirty to carry their point agst. men who are superior to the artifices practised. He was not disposed to run into extremes. He was as much principled as ever agst. aristocracy and monarchy. It was necessary on the one hand that the people should appoint one branch of the Govt. in order to inspire them with the necessary confidence. But he wished the election on the other to be so modified as to secure more effectually a just preference of merit. His idea was that the people should nominate certain persons in certain districts, out of whom the State Legislatures shd make the appointment.

Mr Wilson. He wished for vigor in the Govt., but he wished that vigorous authority to flow immediately from the legitimate source of all authority. The Govt. ought to possess not only 1st. the force, but 2dly. the mind or sense of the people at large. The Legislature ought to be the most exact transcript of the whole Society. Representation is made necessary only because it is impossible for the people to act collectively. The opposition was to be expected he said from the Governments, not from the Citizens of the States. The latter had parted as was observed (by Mr. King) with all the necessary powers; and it was immaterial to them, by whom they were exercised, if well exercised. The State officers were to be the losers of power. The people he supposed would be rather more attached to the national Govt. than to the State Govts. as being more important in itself, and more flattering to their pride. There is no danger of improper elections if made by large districts. Bad elections proceed from the smallness of the districts which give an opportunity to bad men to intrigue themselves into office.

Mr. Sherman. If it were in view to abolish the State Govts. the elections ought to be by the people. If the State Govts. are to be continued, it is necessary in order to preserve harmony between the National & State Govts that the elections to the former shd.

be made by the latter. The right of participating in the National Govt. would be sufficiently secured to the people by their election of the State Legislatures. The objects of the Union, he thought were few, 1. defence agst. foreign danger, 2 agst. internal disputes & a resort to force, 3. Treaties with foreign nations 4 regulating foreign commerce, & drawing revenue from it. These & perhaps a few lesser objects alone rendered a Confederation of the States necessary. All other matters civil & criminal would be much better in the hands of the States. The people are more happy in small than in large States. States may indeed be too small as Rhode Island, & thereby be too subject to faction. Some others were perhaps too large, the powers of Govt. not being able to pervade them. He was for giving the General Govt. power to legislate and execute within a defined province.

Col. Mason. Under the existing Confederacy, Congs. represent the States and not the people of the States: their acts operate on the States, not on the individuals. The case will be changed in the new plan of Govt. The people will be represented; they ought therefore to choose the Representatives. The requisites in actual representation are that the Reps. should sympathize with their constituents; shd. think as they think, & feel as they feel; and that for these purposes shd. even be residents among them. Much he sd. had been alledged agst. democratic elections. He admitted that much might be said; but it was to be considered that no Govt. was free from imperfections & evils; and that improper elections in many instances were inseparable from Republican Govts. But compare these with the advantage of this Form in favor of the rights of the people, in favor of human nature. He was persuaded there was a better chance for proper elections by the people, if divided into large districts, than by the State Legislatures. Paper money had been issued by the latter when the former were against it. Was it to be supposed that the State Legislatures then wd. not send to the Natl. legislature patrons of such projects, if the choice depended on them.

Mr. Madison considered an election of one branch at least of the Legislature by the people immediately, as a clear principle of free Govt. and that this mode under proper regulations had the additional advantage of securing better representatives, as well as of avoiding too great an agency of the State Governments in the General one. He differed from the member from Connecticut (Mr. Sherman) in thinking the objects mentioned to be all the principal ones that required a National Govt. Those were certainly important and necessary objects; but he combined with them the necessity of providing more effectually for the security of private rights, and the steady dispensation of Justice. Interferences with these were evils which had more perhaps than anything else, produced this convention. Was it to be supposed that republican liberty could long exist under the abuses of it practised in some of the States. The gentleman (Mr. Sherman) had admitted that in a very small State, faction & oppression wd. prevail. It was to be inferred then that wherever these prevailed the State was too small. Had they not prevailed in the largest as well as the smallest tho' less than in the smallest; and were we not thence admonished to enlarge the sphere as far as the nature of the Govt. would Admit. This was the only defence agst. the inconveniences of democracy consistent with the democratic form of Govt. All civilized Societies would be divided into different Sects, Factions, & interests, as they happened to consist of rich & poor, debtors & creditors, the landed the manufacturing, the commercial interests, the inhabitants of this district or that district, the followers of this political leader or that political leader—the disciples of this religious Sect or that religious Sect. In all cases where a majority are united by a common interest or passion, the rights of the minority are in danger. What motives are to restrain them? A prudent regard to the maxim that honesty is the best policy is found by experience to be as little regarded by bodies of men as by individuals. Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided. Con-

science, the only remaining tie is known to be inadequate in individuals: In large numbers, little is to be expected from it. Besides, Religion itself may become a motive to persecution & oppression. These observations are verified by the Histories of every country antient & modern. In Greece & Rome the rich & poor, the Creditors & debtors, as well as the patricians & plebeians alternately oppressed each other with equal unmercifulness. What a source of oppression was the relation between the parent cities of Rome, Athens & Carthage, & their respective provinces; the former possessing the power, & the latter being sufficiently distinguished to be separate objects of it? Why was America so justly apprehensive of Parliamentary injustice? Because G. Britain had a separate interest real or supposed, & if her authority had been admitted, could have pursued that interest at our expence. We have seen the mere distinction of colour made in the most enlightened period of time, a ground of the most oppressive dominion ever exercised by man over man. What has been the source of those unjust laws complained of among ourselves? Has it not been the real or supposed interest of the major number? Debtors have defrauded their creditors. The landed interest has borne hard on the mercantile interest. The Holders of one species of property have thrown a disproportion of taxes on the holders of another species. The lesson we are to draw from the whole is that where a majority are united by a common sentiment, and have an opportunity, the rights of the minor party become insecure. In a Republican Govt. the majority if united have always an opportunity. The only remedy is to enlarge the sphere, & thereby divide the community into so great a number of interests & parties, that in the 1st. place a majority will not be likely at the same moment to have a common interest separate from that of the whole or of the minority; and in the 2d place that in case they shd have such an interest, they may not be apt to unite in the pursuit of it. It was incumbent on us then to try this remedy, and with that view to frame a

republican system on such a scale & in such a form as will controul all the evils wch. have been experienced. . . .

EXCERPT OF LETTER FROM JAMES MADISON TO THOMAS JEFFERSON

New York, Octr 24, 1787

Dear Sir,

Your favor of June 20 has been already acknowledged. The last Packet from France brought me that of August 2d. I have recd also by the Mary Capt. Howland the three Boxes for W. H., B.F. and myself. The two first have been duly forwarded. The contents of the last are a valuable addition to former literary remittances and lay me under additional obligations, which I shall always feel more strongly than I express. The articles for Congress have been delivered & those for the two Universities and for General Washington have been forwarded, as have been the various letters for your friends in Virginia and elsewhere. The parcel of rice referred to in your letter to the Delegates of S. Carolina has met with some accident. No account whatever can be gathered concerning it. It probably was not shipped from France. Ubbo's book I find was not omitted as you seem to have apprehended. The charge for it however is, which I must beg you to supply. The duplicate vol of the Encyclopedie, I left in Virginia, and it is uncertain when I shall have an opportunity of returning it. Your Spanish duplicates will I fear be hardly vendible. I shall make a trial whenever a chance presents itself. A few days ago I recd your favor of 15 of Augst. via L'Orient & Boston. The letters inclosed along with it were immediately sent to Virga

You will herewith receive the result of the Convention, which continued its session till the 17th of September. I take the liberty of making some observations on the subject, which will help to make up a letter, if they should answer no other purpose.

It appeared to be the sincere and unanimous wish of the Convention to cherish and preserve the Union of the States. No proposition was made, no suggestion was thrown out, in favor of a partition of the Empire into two or more Confederacies.

It was generally agreed that the objects of the Union could not be secured by any system founded on the principle of a confederation of Sovereign States. A voluntary observance of the federal law by all the members could never be hoped for. A compulsive one could evidently never be reduced to practice, and if it could, involved equal calamities to the innocent & the guilty, the necessity of a military force both obnoxious & dangerous, and in general a scene resembling much more a civil war than the administration of a regular Government.

Hence was embraced the alternative of a Government which instead of operating, on the States, should operate without their intervention on the individuals composing them; and hence the change in the principle and proportion of representation.

This ground-work being laid, the great objects which presented themselves were 1. to unite a proper energy in the Executive, and a proper stability in the Legislative departments, with the essential characters of Republican Government. 2. to draw a line of demarkation which would give to the General Government every power requisite for general purposes, and leave to the States every power which might be most beneficially administered by them. 3. to provide for the different interests of different parts of the Union. 4. to adjust the clashing pretensions of the large and small States. Each of these objects was pregnant with difficulties. The whole of them together formed a task more difficult than can be well conceived by those who were not concerned in the execution of it.

Adding to these considerations the natural diversity of human opinions on all new and complicated subjects, it is impossible to consider the degree of concord which ultimately prevailed as less than a miracle.

The first of these objects, as respects the Executive, was peculiarly embarrassing. On the question whether it should consist of a single person, or a plurality of co-ordinate members, on the mode of appointment, on the duration in office, on the degree of power, on the re-eligibility, tedious and reiterated discussions took place. The plurality of co-ordinate members had finally but few advocates. Governour Randolph was at the head of them. The modes of appointment proposed were various, as by the people at large—by electors chosen by the people—by the Executives of the States—by the Congress, some preferring a joint ballot of the two Houses—some a separate concurrent ballot, allowing to each a negative on the other house—some, a nomination of several candidates by one House, out of whom a choice should be made by the other. Several other modifications were started. The expedient at length adopted seemed to give pretty general satisfaction to the members. As to the duration in office, a few would have preferred a tenure during good behaviour—a considerable number would have done so in case an easy & effectual removal by impeachment could be settled. It was much agitated whether a long term, seven years for example, with a subsequent & perpetual ineligibility, or a short term with a capacity to be re-elected, should be fixed. In favor of the first opinion were urged the danger of a gradual degeneracy of re-elections from time to time, into first a life and then a hereditary tenure, and the favorable effect of an incapacity to be reappointed on the independent exercise of the Executive authority. On the other side it was contended that the prospect of necessary degradation would discourage the most dignified characters from aspiring to the office, would take away the principal motive to ye faithful discharge of its duties—the hope of being rewarded with a reappointment would stimulate ambition to

violent efforts for holding over the Constitutional term—and instead of producing an independent administration, and a firmer defence of the constitutional rights of the department, would render the officer more indifferent to the importance of a place which he would soon be obliged to quit forever, and more ready to yield to the encroachments of the Legislature of which he might again be a member. The questions concerning the degree of power turned chiefly on the appointment to offices, and the controul on the Legislature. An absolute appointment to all offices—to some offices—to no offices, formed the scale of opinions on the first point. On the second, some contended for an absolute negative, as the only possible mean of reducing to practice the theory of a free Government which forbids a mixture of the Legislative & Executive powers. Others would be content with a revisionary power, to be overruled by three fourths of both Houses. It was warmly urged that the judiciary department should be associated in the revision. The idea of some was that a separate revision should be given to the two departments—that if either objected two thirds, if both, three fourths, should be necessary to overrule.

In forming the Senate, the great anchor of the Government the questions, as they came within the first object, turned mostly on the mode of appointment, and the duration of it. The different modes proposed were 1. by the House of Representatives. 2. by the Executive. 3. by electors chosen by the people for the purpose. 4. by the State Legislatures.—On the point of duration, the propositions descended from good behavior to four years, through the intermediate terms of nine, seven, six, & five years. The election of the other branch was first determined to be triennial, and afterwards reduced to biennial.

The second object, the due partition of power between the General & local Governments, was perhaps of all, the most nice and difficult. A few contended for an entire abolition of the States; Some for indefinite power of Legislation in the Congress, with a negative on the laws of the States; some for such a power without a negative; some for a

limited power of legislation, with such a negative; the majority finally for a limited power without the negative. The question with regard to the negative underwent repeated discussions, and was finally rejected by a bare majority. As I formerly intimated to you my opinion in favor of this ingredient, I will take this occasion of explaining myself on the subject. Such a check on the States appears to me necessary 1. to prevent encroachments on the General authority. 2. to prevent instability and injustice in the legislation of the States.

1. Without such a check in the whole over the parts, our system involves the evil of *imperia in imperio*. If a compleat supremacy somewhere is not necessary in every Society, a controuling power at least is so, by which the general authority may be defended against encroachments of the subordinate authorities, and by which the latter may be restrained from encroachments on each other. If the supremacy of the British Parliament is not necessary as has been contended, for the harmony of that Empire; it is evident I think that without the royal negative or some equivalent controul, the unity of the system would be destroyed. The want of some such provision seems to have been mortal to the antient Confederacies, and to be the disease of the modern. Of the Lycian confederacy little is known. That of the Amphyctions is well known to have been rendered of little use whilst it lasted, and in the end to have been destroyed, by the predominance of the local over the federal authority. The same observation may be made, on the authority of Polybius, with regard to the Achæan League. The Helvetic System scarcely amounts to a confederacy, and is disguised by too many peculiarities, to be a ground of comparison. The case of the United Netherlands is in point. The authority of a Stadtholder, the influence of a Standing Army, the common interest in the conquered possessions, the pressure of surrounding danger, the guarantee of foreign powers, are not sufficient to secure the authority and interest of the generality agst. the anti-federal tendency of the provincial sover-

eignties. The German Empire is another example. A Hereditary chief with vast independent resources of wealth and power, a federal Diet, with ample parchment authority, a regular Judiciary establishment, the influence of the neighbourhood of great & formidable Nations have been found unable either to maintain the subordination of the members, or to prevent their mutual contests & encroachments. Still more to the purpose is our own experience both during the war and since the peace. Encroachments of the States on the general authority, sacrifices of national to local interests, interferences of the measures of different States, form a great part of the history of our political system. It may be said that the new Constitution is founded on different principles, and will have a different operation. I admit the difference to be material. It presents the aspect rather of a feudal system of republics, if such a phrase may be used, than of a Confederacy of independent States. And what has been the progress and event of the feudal Constitutions? In all of them a continual struggle between the head and the inferior members, until a final victory has been gained in some instances by one, in others, by the other of them. In one respect indeed there is a remarkable variance between the two cases. In the feudal system the sovereign, though limited, was independent; and having no particular sympathy of interests with the Great Barons, his ambition had as full play as theirs in the mutual projects of usurpation. In the American Constitution The general authority will be derived entirely from the subordinate authorities. The Senate will represent the States in their political capacity; the other House will represent the people of the States in their individual cay. The former will be accountable to their constituents at moderate, the latter at short periods. The President also derives his appointment from the States, and is periodically accountable to them. This dependence of the General on the local authorities, seems effectually to guard the latter against any dangerous encroachments of the former; whilst the latter, within their respective limits, will be continually sensible of the abridgement of their

power, and be stimulated by ambition to resume the surrendered portion of it. We find the representatives of Counties and Corporations in the Legislatures of the States, much more disposed to sacrifice the aggregate interest, and even authority, to the local views of their constituents, than the latter to the former. I mean not by these remarks to insinuate that an esprit de corps will not exist in the National Government or that opportunities may not occur of extending its jurisdiction in some points. I mean only that the danger of encroachments is much greater from the other side, and that the impossibility of dividing powers of legislation, in such a manner, as to be free from different constructions by different interests, or even from ambiguity in the judgment of the impartial, requires some such expedient as I contend for. Many illustrations might be given of this impossibility. How long has it taken to fix, and how imperfectly is yet fixed the legislative power of corporations, though that power is subordinate in the most compleat manner? The line of distinction between the power of regulating trade and that of drawing revenue from it, which was once considered the barrier of our liberties, was found on fair discussion, to be absolutely undefinable. No distinction seems to be more obvious than that between spiritual and temporal matters. Yet wherever they have been made objects of Legislation, they have clashed and contended with each other, till one or the other has gained the supremacy. Even the boundaries between the Executive, Legislative, & Judiciary powers, though in general so strongly marked in themselves, consist in many instances of mere shades of difference. It may be said that the Judicial authority, under our new system will keep the States within their proper limits, and supply the place of a negative on their laws. The answer is, that it is more convenient to prevent the passage of a law than to declare it void after it is passed; that this will be particularly the case, where the law ag-grieves individuals, who may be unable to support an appeal agst a State to the supreme Judiciary; that a State which would violate the Legislative rights of the Union, would not

be very ready to obey a Judicial decree in support of them, and that a recurrence to force, which, in the event of disobedience would be necessary, is an evil which the new Constitution meant to exclude as far as possible.

2. A constitutional negative on the laws of the States seems equally necessary to secure individuals agst encroachments on their rights. The mutability of the laws of the States is found to be a serious evil. The injustice of them has been so frequent and so flagrant as to alarm the most stedfast friends of Republicanism. I am persuaded I do not err in saying that the evils issuing from these sources contributed more to that uneasiness which produced the Convention, and prepared the Public mind for a general reform, than those which accrued to our national character and interest from the inadequacy of the Confederation to its immediate objects. A reform therefore which does not make provision for private rights, must be materially defective. The restraints agst. paper emissions, and violations of contracts are not sufficient. Supposing them to be effectual as far as they go, they are short of the mark. Injustice may be effected by such an infinitude of legislative expedients, that where the disposition exists it can only be controuled by some provision which reaches all cases whatsoever. The partial provision made, supposes the disposition which will evade it. It may be asked how private rights will be more secure under the Guardianship of the General Government than under the State Governments, since they are both founded on the republican principle which refers the ultimate decision to the will of the majority, and are distinguished rather by the extent within which they will operate, than by any material difference in their structure. A full discussion of this question would, if I mistake not, unfold the true Principles of Republican Government, and prove in contradiction to the concurrent opinions of the theoretical writers, that this form of Government, in order to effect its purposes, must operate not within a small but an extensive sphere. I will state some of the ideas which have occurred to me on the sub-

ject. Those who contend for a simple Democracy, or a pure republic, actuated by the sense of the majority, and operating within narrow limits, assume or suppose a case which is altogether fictitious. They found their reasoning on the idea, that the people composing the Society, enjoy not only an equality of political rights; but that they have all precisely the same interests, and the same feelings in every respect. Were this in reality the case, their reasoning would be conclusive. The interest of the majority would be that of the minority also; the decisions could only turn on mere opinion concerning the good of the whole, of which the major voice would be the safest criterion; and within a small sphere, this voice could be most easily collected, and the public affairs most accurately managed. We know however that no society ever did or can consist of so homogeneous a mass of Citizens. In the savage state indeed, an approach is made towards it; but in that state little or no Government is necessary. In all civilized societies, distinctions are various and unavoidable. A distinction of property results from that very protection which a free Government gives to unequal faculties of acquiring it. There will be rich and poor; creditors and debtors; a landed interest, a monied interest, a mercantile interest, a manufacturing interest. These classes may again be subdivided according to the different productions of different situations & soils, & according to different branches of commerce and of manufactures. In addition to these natural distinctions, artificial ones will be founded, on accidental differences in political, religious, or other opinions, or an attachment to the persons of leading individuals. However erroneous or ridiculous these grounds of dissention and faction may appear to the enlightened Statesman or the benevolent philosopher, the bulk of mankind who are neither Statesmen nor Philosophers, will continue to view them in a different light. It remains then to be enquired whether a majority having any common interest, or feeling any common passion, will find sufficient motives to restrain them from oppressing the minority. An individual is never allowed to

be a judge or even a witness, in his own cause. If two individuals are under the bias of interest or enmity agst. a third, the rights of the latter could never be safely referred to the majority of the three. Will two thousand individuals be less apt to oppress one thousand, or two hundred thousand one hundred thousand? Three motives only can restrain in such cases: 1. a prudent regard to private or partial good, as essentially involved in the general and permanent good of the Whole. This ought no doubt to be sufficient of itself. Experience however shews that it has little effect on individuals, and perhaps still less on a collection of individuals, and least of all on a majority with the public authority in their hands. If the former are ready to forget that honesty is the best policy; the last do more. They often proceed on the converse of the maxim, that whatever is politic is honest. 2. respect for character. This motive is not found sufficient to restrain individuals from injustice. And loses its efficacy in proportion to the number which is to divide the pain or the blame. Besides as it has reference to public opinion, which is that of the majority, the standard is fixed by those whose conduct is to be measured by it. 3. Religion. The inefficacy of this restraint on individuals is well known. The conduct of every popular Assembly, acting on oath, the strongest of religious ties, shews that individuals join without remorse in acts agst. which their consciences would revolt, if proposed to them separately in their closets. When Indeed Religion is kindled into enthusiasm, its force like that of other passions is increased by the sympathy of a multitude. But enthusiasm is only a temporary state of Religion, and whilst it lasts will hardly be seen with pleasure at the helm. Even in its coolest state, it has been much oftener a motive to oppression than a restraint from it. If then there must be different interests and parties in society; and a majority when united by a common interest or passion cannot be restrained from oppressing the minority, what remedy can be found in a republican Government, where the majority must ultimately decide, but that of giving such an extent to its sphere, that no common

interest or passion will be likely to unite a majority of the whole number in an unjust pursuit. In a large Society, the people are broken into so many interests and parties, that a common sentiment is less likely to be felt, and the requisite concert less likely to be formed, by a majority of the whole. The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority and have the power, other sects will be sure to be depressed. Divide et impera, the reprobated axiom of tyranny, is under certain qualifications, the only policy, by which a republic can be administered on just principles. It must be observed however that this doctrine can only hold within a sphere of a mean extent. As in too small a sphere oppressive combinations may be too easily formed agst. the weaker party; so in too extensive a one, a defensive concert may be rendered too difficult against the oppression of those entrusted with the administration. The great desideratum in Government is, so to modify the sovereignty as that it may be sufficiently neutral between different parts of the Society to controul one part from invading the rights of another, and at the same time sufficiently controuled itself, from setting up an interest adverse to that of the entire Society. In absolute monarchies, the Prince may be tolerably neutral towards different classes of his subjects but may sacrifice the happiness of all to his personal ambition or avarice. In small republics, the sovereign will is controuled from such a sacrifice of the entire Society, but is not sufficiently neutral towards the parts composing it. In the extended Republic of the United States, the General Government would hold a pretty even balance between the parties of particular States, and be at the same time sufficiently restrained by its dependence on the community, from betraying its general interests.

Begging pardon for this immoderate digression I return to the third object above mentioned

FEDERALIST NUMBER 10

November 22, 1787

The Utility of the Union as a Safeguard Against Domestic Faction and Insurrection (continued)

To the People of the State of New York:

AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction. The friend of popular governments never finds himself so much alarmed for their character and fate, as when he contemplates their propensity to this dangerous vice. He will not fail, therefore, to set a due value on any plan which, without violating the principles to which he is attached, provides a proper cure for it. The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations. The valuable improvements made by the American constitutions on the popular models, both ancient and modern, cannot certainly be too much admired; but it would be an unwarrantable partiality, to contend that they have as effectually obviated the danger on this side, as was wished and expected. Complaints are everywhere heard from our most considerate and virtuous citizens, equally the friends of public and private faith, and of public and personal liberty, that our governments are too unstable, that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority. However anxiously

we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true. It will be found, indeed, on a candid review of our situation, that some of the distresses under which we labor have been erroneously charged on the operation of our governments; but it will be found, at the same time, that other causes will not alone account for many of our heaviest misfortunes; and, particularly, for that prevailing and increasing distrust of public engagements, and alarm for private rights, which are echoed from one end of the continent to the other. These must be chiefly, if not wholly, effects of the unsteadiness and injustice with which a factious spirit has tainted our public administrations.

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

The second expedient is as impracticable as the first would be unwise. As long as the reason of man continues fallible, and he is at liberty to exercise it, different opinions

will be formed. As long as the connection subsists between his reason and his self-love, his opinions and his passions will have a reciprocal influence on each other; and the former will be objects to which the latter will attach themselves. The diversity in the faculties of men, from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of government. From the protection of different and unequal faculties of acquiring property, the possession of different degrees and kinds of property immediately results; and from the influence of these on the sentiments and views of the respective proprietors, ensues a division of the society into different interests and parties.

The latent causes of faction are thus sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points, as well of speculation as of practice; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good. So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity

in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government.

No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time; yet what are many of the most important acts of legislation, but so many judicial determinations, not indeed concerning the rights of single persons, but concerning the rights of large bodies of citizens? And what are the different classes of legislators but advocates and parties to the causes which they determine? Is a law proposed concerning private debts? It is a question to which the creditors are parties on one side and the debtors on the other. Justice ought to hold the balance between them. Yet the parties are, and must be, themselves the judges; and the most numerous party, or, in other words, the most powerful faction must be expected to prevail. Shall domestic manufactures be encouraged, and in what degree, by restrictions on foreign manufactures? are questions which would be differently decided by the landed and the manufacturing classes, and probably by neither with a sole regard to justice and the public good. The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice. Every shilling with which they overburden the inferior number, is a shilling saved to their own pockets.

It is in vain to say that enlightened statesmen will be able to adjust these clashing interests, and render them all subservient to the public good. Enlightened statesmen will not always be at the helm. Nor, in many cases, can such an adjustment be made at all

without taking into view indirect and remote considerations, which will rarely prevail over the immediate interest which one party may find in disregarding the rights of another or the good of the whole.

The inference to which we are brought is, that the causes of faction cannot be removed, and that relief is only to be sought in the means of controlling its effects.

If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote. It may clog the administration, it may convulse the society; but it will be unable to execute and mask its violence under the forms of the Constitution. When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens. To secure the public good and private rights against the danger of such a faction, and at the same time to preserve the spirit and the form of popular government, is then the great object to which our inquiries are directed. Let me add that it is the great desideratum by which this form of government can be rescued from the opprobrium under which it has so long labored, and be recommended to the esteem and adoption of mankind.

By what means is this object attainable? Evidently by one of two only. Either the existence of the same passion or interest in a majority at the same time must be prevented, or the majority, having such coexistent passion or interest, must be rendered, by their number and local situation, unable to concert and carry into effect schemes of oppression. If the impulse and the opportunity be suffered to coincide, we well know that neither moral nor religious motives can be relied on as an adequate control. They are not found to be such on the injustice and violence of individuals, and lose their efficacy in proportion to the number combined together, that is, in proportion as their efficacy becomes needful.

From this view of the subject it may be concluded that a pure democracy, by which I mean a society consisting of a small number of citizens, who assemble and administer the government in person, can admit of no cure for the mischiefs of faction. A common passion or interest will, in almost every case, be felt by a majority of the whole; a communication and concert result from the form of government itself; and there is nothing to check the inducements to sacrifice the weaker party or an obnoxious individual. Hence it is that such democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths. Theoretic politicians, who have patronized this species of government, have erroneously supposed that by reducing mankind to a perfect equality in their political rights, they would, at the same time, be perfectly equalized and assimilated in their possessions, their opinions, and their passions.

A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under

such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests, of the people. The question resulting is, whether small or extensive republics are more favorable to the election of proper guardians of the public weal; and it is clearly decided in favor of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence, the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established characters.

It must be confessed that in this, as in most other cases, there is a mean, on both sides of which inconveniences will be found to lie. By enlarging too much the number of electors, you render the representatives too little acquainted with all their local circumstances and lesser interests; as by reducing it too much, you render him unduly attached

to these, and too little fit to comprehend and pursue great and national objects. The federal Constitution forms a happy combination in this respect; the great and aggregate interests being referred to the national, the local and particular to the State legislatures.

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonorable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary.

Hence, it clearly appears, that the same advantage which a republic has over a democracy, in controlling the effects of faction, is enjoyed by a large over a small republic, -- is enjoyed by the Union over the States composing it. Does the advantage consist in the substitution of representatives whose enlightened views and virtuous sentiments render them superior to local prejudices and schemes of injustice? It will not be denied that the representation of the Union will be most likely to possess these requisite endowments. Does it consist in the greater security afforded by a greater variety of parties, against the

event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority? Here, again, the extent of the Union gives it the most palpable advantage.

The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States. A religious sect may degenerate into a political faction in a part of the Confederacy; but the variety of sects dispersed over the entire face of it must secure the national councils against any danger from that source. A rage for paper money, for an abolition of debts, for an equal division of property, or for any other improper or wicked project, will be less apt to pervade the whole body of the Union than a particular member of it; in the same proportion as such a malady is more likely to taint a particular county or district, than an entire State.

In the extent and proper structure of the Union, therefore, we behold a republican remedy for the diseases most incident to republican government. And according to the degree of pleasure and pride we feel in being republicans, ought to be our zeal in cherishing the spirit and supporting the character of Federalists.

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